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Freedom of information vs. national security

The Supreme Court, in April, gave the CIA absolute power to keep its sources of information secret. In a 7-to-2 decision written by Chief Justice Warren Burger, the court said that Congress in 1947 gave the director of central intelligence "very broad authority to protect all sources of intelligence information from disclosure."

The decision overturned a ruling by the federal appeals court in Washington, D.C., which the CIA said would cripple its ability to gather intelligence, because the agency would be forced to reveal sources.

The Supreme Court decision is welcome because, as a result of the Freedom of Information Act passed by Congress in 1966, much vital national and internal security data gathered by the CIA, the FBI, the Drug Enforcement Administration, and other government agencies has been released, in many instances to criminals, terrorists, and unfriendly foreign governments.

Clearly, it is time to reform the FOIA and make it serve, rather than harm, the public interest.

The initial report on the FOIA by the House of Representatives states that "It is vital to our way of life to reach a workable balance between the right of the public to know and the need of government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy." In signing the FOIA into law July 4, 1966, President Lyndon Johnson stated,

"This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation permits. ... No one should be able to pull curtains of secrecy around the decisions which can be revealed without injury to the public interest."

Over the years, many government bureaucrats — and elected leaders — have sought to keep from public view records of their actions which

might prove embarrassing or unpopular. The FOIA sought to prevent this practice, surely a policy which is consistent with our values as an open society and which is supported by the overwhelming majority of Americans.

Yet, as the law was amended and applied, it has become so broad that even vital matters of national security have been made public, doing serious harm to our intelligence-gathering capability.

The fact is that the overwhelming majority of FOIA requests do not come from members of the press and other researchers and analysts but from convicted felons and people involved in intelligence-gathering activities for business and foreign governments.

A recent report issued by The Heritage Foundation, for example, estimates that more than 85 percent of the requests received under FOIA by the Food and Drug Administration, which received more than 33,000 in a recent typical year, are from regulated industry, their attorneys, or firms believed to be acting in behalf of regulated industry. These requests are usually for information submitted by competitors.

Most serious is the release of material from our intelligence-gathering agencies — which has resulted in a sharp reduction in the ability of such agencies to gather intelligence through informants. Sources who otherwise would have cooperated with the CIA, FBI, or DEA are now hesitant to do so — afraid that their identities may be revealed.

When Joanne Chesimard, a leader in a terrorist group, the Black Liber-

ation Army, was arrested for the murder of a New Jersey state trooper, it was discovered that she had in her possession 327 documents totaling 1,700 pages of FBI informa-

tion about herself and her group. As a result of a simple FOIA request, she learned the names of government informants from the documents and, according to FBI Director William Webster, she learned information that "went to the very heart of the operations of the bureau and other law enforcement agencies. She learned our techniques — she learned to anticipate what we do."

Clinto Pagano, head of the New Jersey State Police, said that as a result of the Chesimard case, "the working relationship between the New Jersey State Police and the FBI has suffered accordingly."

In October 1981, \$1.6 million was stolen in the robbery of a Brink's armored car in Nanuet, N.Y., by members of the radical terrorist group the Weather Underground Organization. Two policemen were killed at the time. Of the WUO members charged, five had FOIA requests for FBI information on themselves and four had obtained files. Two were involved in suits for more files.

Gene Bowdach, who spent much of his life in organized crime and five years in the penitentiary, revealed that, while in prison, he had used the FOIA to find out whether the government had other investigations against him and in an effort to discover who had informed on him.

He did learn who had informed on a friend and this man is believed to have been murdered as a result. Informants can be identified, he explained, even though the FOIA provides for deletion of names.

Concerning repeated revelations of material from the files of the CIA, District Court Gerhard Gesell said: "It is amazing that a rational society tolerates the expense, the waste of resources, the potential injury to its own security, which this process necessarily entails."

Even the KGB is taking advantage of the FOIA. Arkady Shevchenko, the highest-ranking Soviet official to defect to the United States and former assistant secretary general of the United Nations, has stated

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that Soviet journalists have used American "friends" to file FOIA requests for them — and it is a matter of public record that the Soviet news agency TASS has filed FOIA requests with the State Department. Mr. Shevchenko has called the FOIA "stupid," because it gives Moscow information "on a golden plate."

When he was deputy director of the CIA, Frank Carlucci testified in 1980: "The chief of a major foreign intelligence service sat in my office and flatly stated that he could no longer fully cooperate as long as the CIA is subject to the FOIA."

Current CIA director William Casey says 15 friendly foreign intelligence services had taken the same position. Francis J. McNamara, who served as executive secretary of the Subversive Activities Control Board, declares: "Because the best intelligence agencies in the world are those most careful about protecting themselves and their sources, it follows not only that the quantity loss to the U.S. but the quality loss has been tremendous."

The latest Supreme Court decision is a step in the right direction. Another such step would be adoption of amendments to the FOIA introduced by Sen. Orrin Hatch, R-Utah, which would include sealing files on organized crime investigations for up to eight years and expanding protection for government informants.

An open society, of course, is vital — but so is the ability of government to protect national and internal security information. As former Justice Arthur Goldberg once declared, "The Constitution is not a suicide pact."

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